

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Spirit Broadcasting, Inc.)	File Number: EB-10-NF-0020
)	
Licensee of Station WGTM (AM))	NAL/Acct. No.: 201132640003
Wilson, North Carolina)	
Facility ID # 61929)	FRN: 0009359811

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 18, 2011

Released: July 18, 2011

By the Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“*NAL*”), we find that Spirit Broadcasting, Inc., (“*Spirit*”), licensee of Station WGTM(AM), in Wilson, North Carolina, apparently willfully and repeatedly violated sections 11.35, 73.49, and 73.3526 of the Commission’s rules (“*Rules*”)¹ by failing to: (1) maintain operational Emergency Alert System (“*EAS*”) equipment; (2) enclose an antenna tower, having radio frequency potential at the base, within an effectively locked fence; and (3) maintain and make available a public inspection file. We conclude that Spirit is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000). We further order Spirit to submit a sworn statement certifying that it is currently in compliance with sections 11.35, 73.49, and 73.3526 of the Rules.²

II. BACKGROUND

2. On March 8 and March 10, 2010, in response to a complaint, an agent from the Enforcement Bureau’s Norfolk Office visited Station WGTM’s unattended transmitter site in Rock Ridge, North Carolina. On both dates, the agent observed that the base fence for one of the antennas of Station WGTM’s four-antenna array, antenna structure number 1010779, which had radio frequency potential at the base, was unlocked and in disrepair. The agent also observed that there was no perimeter fence around the Station WGTM property.

3. On March 8, 2010, an agent from the Norfolk Office, accompanied by the station’s general manager/President of Spirit, also conducted an inspection of the main studio for Station WGTM at 520 Ward Boulevard in Wilson, North Carolina. The agent conducted the inspection during regular business hours and when the station was in operation. The agent observed that Station WGTM did not have an installed, functional EAS system and had no documentation, logs, or records showing that EAS equipment had ever been installed at the main studio or that any EAS weekly or monthly tests had ever been sent or received. In response to a request to inspect the station’s public inspection file, the general manager was

¹ 47 C.F.R. §§ 11.35, 73.49, 73.3526.

² *Id.*

unable to produce or make available the station's public inspection file or any of the required contents of the file.

4. In a response to a Letter of Inquiry from the Commission,³ Spirit stated that during the inspection on March 8, 2010: (1) they were in the midst of a move from Ward Boulevard to a new main studio on Martin Luther King Parkway; (2) the EAS equipment and public inspection file were in transit; (3) unbeknownst to the general manager, one of the engineers had the EAS equipment in his possession and it needed repair; (4) that the public inspection file is now available at the Martin Luther King Parkway main studio; (5) that the EAS unit is now installed at the Martin Luther King Parkway main studio; (6) that it is unknown when the fence first became unlocked, (7) that the base fence has been fixed twice since the inspection due to vandalism, and (8) that the fence has generally been checked once a week since March 2010.⁴ In a subsequent response,⁵ Spirit added that the EAS equipment was installed at the Martin Luther King Parkway main studio on June 10, 2010.⁶ Spirit also provided a copy of an invoice which indicates EAS equipment was "set up" at an unspecified location on April 18, 2010.⁷ Spirit stated it would provide a supplement from its engineer clarifying when its EAS equipment became defective, was removed for repair, and was re-installed,⁸ but the supplement was never submitted.

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("Act"), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁹ Section 312(f)(1) of the Act defines willful as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁰ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act¹¹ and the Commission has so interpreted the term in the section 503(b) context.¹² The Commission may also assess

³ Letter from Luther Bolden, Resident Agent, Norfolk Office, to Spirit Broadcasting, Inc., dated August 25, 2010.

⁴ See Letter from Celestine Willis, President, Spirit Broadcasting, Inc., to Luther Bolden, Resident Agent, Norfolk Office, dated September 13, 2010 ("*First LOI Response*").

⁵ Letter from Luther Bolden, Resident Agent, Norfolk Office, to Spirit Broadcasting, Inc., dated November 9, 2010.

⁶ See Letter from Celestine Willis, President, Spirit Broadcasting, Inc., to Luther Bolden, Resident Agent, Norfolk Office, dated November 23, 2010 ("*Second LOI Response*").

⁷ *Id.* Spirit states the EAS was installed at the transmitter site on April 18, 2010, but the invoice did not specify the installation location.

⁸ *Id.*

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ H.R. Conf. Rep. No. 97-765 at 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms").

¹² See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California Broadcasting Co.*").

a forfeiture for violations that are merely repeated, and not willful.¹³ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁴

6. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to refrain from participation, and that request is approved by the Commission.¹⁵ The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.¹⁶ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹⁷ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation’s emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

7. Section 11.35(a) of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.¹⁸ On March 8, 2010, an agent from the Norfolk Office observed Station WGTM operate without any EAS equipment installed at its main studio. Spirit presented no evidence that Station WGTM ever had operational EAS equipment or had ever sent or received any EAS weekly or monthly tests.¹⁹ During the inspection, the general manager stated that she was not sure when the EAS equipment had been removed. The general manager later asserted in writing that the EAS equipment had been removed for repair by the station’s engineer and was in transit for a move to the Martin Luther King Parkway main studio during the inspection, but failed to provide evidence of when the equipment became defective and was removed from service and to clarify when the equipment was re-installed.²⁰ The general manager did not mention the move from the Ward Boulevard main studio to the Martin Luther King Parkway main studio during the inspection. Because Spirit consciously operated its station and was without EAS equipment for more than

¹³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁴ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁵ 47 C.F.R. §§ 11.11, 11.41.

¹⁶ 47 C.F.R. §§ 11.1, 11.21.

¹⁷ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹⁸ 47 C.F.R. § 11.35(a).

¹⁹ See 47 C.F.R. § 11.35(a) (requiring EAS Participants to make entries in the broadcast station log explaining why any EAS tests or activations were not received or sent).

²⁰ Section 11.35(b) of the Rules allows licensees to operate without defective EAS equipment pending its repair or replacement for 60 days without further FCC authority. Entries must be made in the broadcast station log showing the date and time the equipment was removed and restored to service. 47 C.F.R. § 11.35(b). Because Spirit has no records of when its EAS equipment became defective or was removed for repair and has no evidence of having sent or received any EAS tests, Spirit has not shown that it was without effective EAS equipment pending its repair for less than 60 days.

one day,²¹ we find that the apparent violations were willful and repeated. Therefore, based on the evidence before us, we find that Spirit apparently willfully and repeatedly violated section 11.35 of the Rules by failing to install operational EAS equipment.

8. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures.²² On March 8, 2010 and March 10, 2010, when the station was in operation, an agent from the Norfolk Office observed that the gate to the base fence surrounding Spirit's antenna structure number 1010779 was opened and not locked. The agent also observed that there was no perimeter property fence for the property. Spirit states that it does not know when the fence first became damaged and unlocked and was not regularly inspecting the fence prior to the inspection.²³ Therefore, based on the evidence before us, we find that Spirit apparently willfully and repeatedly violated section 73.49 of the Rules by failing to enclose an antenna tower with radio frequency potential at the base within an effective locked fence.

9. Section 73.3526 of the Rules states that “[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing the material” set forth in this section.²⁴ The public inspection file must be maintained at the main studio of the station²⁵ and must be available for public inspection at any time during regular business hours.²⁶ In response to a request during regular business hours on March 8, 2010, at its Ward Boulevard main studio, Station WGTM was unable to make its public inspection file or any of the required contents of the file available. During the inspection, the station's general manager stated that she was not sure where the public inspection file was located. She made no mention at that time that the station was relocating its main studio. Later, in the *First LOI Response*, the general manager asserted that the public inspection file was in transit for a move to a new Martin Luther King Parkway main studio at the time of the inspection.²⁷ The general manager admitted, however, that at the time of the March 8 inspection, the Martin Luther King Parkway main studio was not operational.²⁸ Under these circumstances, Spirit's actions would still constitute a violation of section 73.3526. That section requires that the public file be made available for public inspection at the station's main studio, which at the time of the inspection was located on Ward Boulevard. Moreover, Spirit made no indication to the agent during the inspection that its public file was available at another location; rather, as noted above, the station's general manager stated that she did not know where the file was located. Thus, based on the evidence before us, we find that Spirit apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to maintain a public inspection file at its main studio and apparently willfully failed to make available its public inspection file upon request.

10. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for EAS equipment not installed or operational is \$8,000, for AM tower fencing

²¹ Spirit provided an unsigned invoice stating EAS equipment had been re-installed at an unspecified location on April 18, 2010, so Spirit may have been without operational equipment until at least April 18, 2010, but in any case it installed EAS equipment by June 10, 2010 at its new main studio. *Second LOI Response* at 2.

²² 47 C.F.R. § 73.49

²³ *First LOI Response* at 4-5.

²⁴ 47 C.F.R. § 73.3526(a)(2).

²⁵ 47 C.F.R. § 73.3526(b).

²⁶ 47 C.F.R. § 73.3526(c).

²⁷ *First LOI Response* at 2.

²⁸ *Id.*

is \$7,000, and for violation of public file rules is \$10,000.²⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.³⁰ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Spirit is apparently liable for a total forfeiture of \$25,000, consisting of \$8,000 for its EAS violations; \$7,000 for its AM tower fencing violations; and \$10,000 for its public inspection file violations.

11. We direct Spirit to submit a statement signed under penalty of perjury by an officer or director of Spirit stating that: (1) it has installed operational EAS equipment in its main studio in compliance with section 11.35 of the Rules; (2) the base fence surrounding Station WGTM(AM)'s antenna structure number 1010779 is locked and effective, in compliance with section 73.49 of the Rules; and (3) a complete public inspection file is available at Station WGTM(AM)'s main studio. This statement must be provided to the Norfolk Office at the address listed in paragraph 16 within thirty days after the release date of this *NAL*.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's Rules, Spirit Broadcasting, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of sections 11.35, 73.49, and 73.3526 of the Rules.³¹

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Spirit Broadcasting, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. **IT IS FURTHER ORDERED** that Spirit Broadcasting, Inc. **SHALL SUBMIT** a sworn statement as described in paragraph 11 to the Norfolk Office within thirty days after the release date of this *Notice of Apparent Liability for Forfeiture and Order*.

15. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625,

²⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

³⁰ 47 U.S.C. § 503(b)(2)(E).

³¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35, 73.49, 73.3526.

Washington, D.C. 20554.³² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Spirit Broadcasting Inc. shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Norfolk Office, 1457 Mount Pleasant Road Suite 113, Chesapeake VA 23322 and must include the NAL/Acct. No. referenced in the caption. Spirit also shall email the written response to SCR-Response@fcc.gov.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Spirit Broadcasting, Inc. at P.O. Box 3837, Wilson, NC 27895.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden
Resident Agent
Norfolk Office
South Central Region
Enforcement Bureau

³² See 47 C.F.R. §1.1914.